



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: PHE/Maser, Inc.

File: B-238367.5

Date: August 28, 1991

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Gregory H. Petkoff, Esq., and Paul D. Warring, Esq., Department of the Air Force, for the agency.
Glenn G. Wolcott, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In procurement set aside for small business concerns, where protester's and awardee's proposals were both rated "blue/exceptional," and protester's evaluated cost was significantly lower than awardee's, agency's rejection of protester's proposal because of "high risk" based on agency's assessment of protester's financial capability, protester's intent or ability to comply with the solicitation's "Limitations on Subcontracting" clause, protester's capacity to form a contract, and protester's contract performance history, was improper in part because the risk assessment resulted in a circumvention of the requirements of the Small Business Act and in part because the risk assessment is unsupported by the record.

DECISION

PHE/Maser, Inc. protests the Department of the Air Force's rejection of its proposal under request for proposals (RFP) No. F49642-89-RA190. PHE/Maser protests that the Air Force's rejection of its proposal on the basis of a "risk assessment" constituted a nonresponsibility determination which must be referred to the Small Business Administration (SBA) for a final determination.

We sustain the protest.

BACKGROUND

On August 28, 1989, the Air Force issued RFP No. F49642-89-RA190 as a total small business set-aside. This solicitation sought technical and engineering support services involving environmental matters for the Air Force on a task order basis. The RFP contemplated a base contract period of 1 year and four 1-year options.

PHE/Maser submitted a proposal on or before the October 30, 1989, closing date.^{1/} On March 7, 1990, the contracting officer amended the RFP, requesting offerors to submit revised cost proposals and stating that offerors should not submit revised technical proposals. By letter dated April 19, 1990, the contracting officer notified the offerors that PHE/Maser was the apparent successful offeror.

On May 1, 1990, a disappointed offeror filed a protest with our Office, challenging PHE/Maser's corporate status, arguing generally that PHE/Maser was too small to perform the contract, and suggesting specifically that PHE/Maser would be unable to comply with the RFP's "Limitations on Subcontracting" clause set forth at Federal Acquisition Regulation (FAR) § 52.219-14.^{2/} A second protest was also filed, asserting that the Air Force had improperly precluded offerors from revising their technical proposals. Because of his concerns about the protest allegations, the contracting officer decided to reopen negotiations, conduct discussions with all offerors, and request best and final offers (BAFOs).^{3/}

^{1/} At the time the proposal was submitted, PHE/Maser was not formally incorporated; formal incorporation subsequently occurred on May 8, 1990.

^{2/} This clause provides that at least 50 percent of the personnel costs of contract performance must be for employees of the prime contractor.

^{3/} In a statement by the contracting officer, dated May 5, 1990, provided to this Office incident to the prior protests, the Air Force explained:

"[T]he contracting officer in his lack of faith in the reliability of PHE/Maser decided to open a discussion phase to get the existing GAO protests withdrawn . . . rather than argue the merits of the protests on behalf of a very questionable contractor like PHE/Maser and experience the months of more delay incidental to such an argument."

By letter dated May 16, 1990, the contracting officer advised PHE/Maser that the Air Force was "considering rejecting" its proposal because (1) PHE/Maser was not incorporated at the time it submitted its initial proposal; (2) the Air Force believed the initial proposal was submitted on behalf of a joint venture consisting of Potomac Hudson Engineering, Inc. (PHE) and Maser Sosinski & Associates (Maser)^{4/}; and (3) the Air Force believed that Maser had abandoned the venture, rendering the proposal "technically unacceptable." The Air Force requested that PHE/Maser respond to these concerns by May 24, and stated that it would "consider your comments and provide you with our decision without delay."

By letter dated May 22, PHE/Maser responded to the Air Force, pointing out that although PHE/Maser was not a de jure corporation at the time the proposal was submitted, formal incorporation had occurred in the state of New Jersey on May 8, 1990. PHE/Maser pointed out to the Air Force that its submission of a proposal in its corporate name prior to formal incorporation was permissible and referred to the decision of this Office in Telex Communications, Inc.; Mil-Tech Sys., Inc., B-212385; B-212385.2, Jan. 30, 1984, 84-1 CPD ¶ 127, aff'd, B-212385.3, Apr. 18, 1984, 84-1 CPD ¶ 440, in which we stated that a contract may be awarded to a business which submitted its bid as a corporation, but was not incorporated until after bid opening. In its May 22 letter, PHE/Maser also responded to the Air Force's other concerns, arguing generally that it was a responsible contractor and should remain eligible for award.

The Air Force did not expressly respond to PHE/Maser's May 22 letter as it had promised. However, by letter addressed to "PHE/Maser, Inc." dated June 4, 1990, the contracting officer requested that PHE/Maser submit a BAFO. Attached to the BAFO request were clarification requests and deficiency reports concerning PHE/Maser's proposal. Neither the BAFO request nor the attachments indicated any Air Force concern that "PHE/Maser, Inc." was not a proper entity to continue competing for this procurement.

^{4/} PHE/Maser's initial proposal was submitted in the name of "PHE/Maser, Inc."

On June 19, 1990, PHE/Maser and seven other offerors submitted BAFOs. Those proposals were subsequently evaluated by the Air Force's source selection evaluation team (SSET) using the evaluation factors and rating scheme identified in section M of the RFP.^{5/}

By memorandum dated August 16, 1990, the SSET chairman advised the source selection authority (SSA) that both PHE/Maser's and RAI's proposals were rated "blue" (the highest possible rating under the evaluation scheme) by the SSET.^{6/} The cost proposed by PHE/Maser, as evaluated by the SSET, was significantly lower (approximately 25 percent) than RAI's evaluated cost. At the bid protest hearing, the SSET chairman stated that, after BAFOs had been evaluated, it was the consensus of the technical evaluation team that PHE/Maser's proposal was "low to medium risk," Transcript (Tr.) at 56, and "as far as we were concerned on the technical side, the RAI proposal and the PHE/Maser proposal were equal, or nearly so, from a risk standpoint." Tr. at 53.

By letters dated September 19, and December 10, 1990, the Air Force asked PHE/Maser to extend its BAFO. PHE/Maser responded to each request by extending the period during which its offer remained effective. On February 21, 1991, the contracting officer wrote a "Memorandum for the Record" regarding "Contractor Selection under RFP No. F49642-89-RA190." In that memorandum the contracting officer stated:

^{5/} Section M of the RFP advised offerors that award would be based on the best overall proposal considering, in descending order of importance, technical, management, and cost factors. The RFP identified seven specific performance categories for evaluation under the technical factor and three categories for evaluation under the management factor. It also referenced the color/adjectival and risk assessment scheme contained in Air Force Regulation 70-30. Under this evaluation scheme, proposals are to be rated as blue/exceptional, green/acceptable, yellow/marginal, or red/unacceptable. Proposal risk assessments are also to be made. A proposal's risk is assessed as high, medium, or low depending on the potential for disruption of schedule, increase in cost, or degradation of performance. Any risk assessment rating may be used with any color code.

^{6/} At the bid protest hearing conducted in our Office, although the SSA stated that he believed RAI's proposal was slightly superior to PHE/Maser's, he agreed with the SSET's determination that both PHE/Maser's and RAI's proposals were "blue" and stated that he did not reevaluate proposals against the RFP criteria.

"On its face, PHE/Maser's Best and Final Offer (BAFO) is our best BAFO since it contains the lowest price among the prices in all the BAFOs with 'blue' technical proposals. However, I have serious concerns about the risk involved with doing business with the company and its actual eligibility for the award."

The memorandum went on to state that the contracting officer's "concerns about risk" were based on: (1) the fact that PHE/Maser did not become incorporated until after the initial proposal was submitted, and (2) doubt as to whether PHE/Maser would comply with the "Limitations on Subcontracting" clause. The SSET chairman subsequently incorporated this memorandum into the proposal analysis report which he prepared to assist the SSA in making the final source selection decision. The record does not indicate that either the SSET chairman or the contracting officer suggested that the matter be referred to the SBA for a determination regarding PHE/Maser's responsibility.

On March 13, 1991, after reviewing the proposal analysis report, the SSA issued his source selection decision document selecting RAI as the successful offeror. Attached to the decision document was an "integrated assessment" of the various proposals which stated with regard to risk:

"[PHE/Maser's] BAFO ended up being evaluated as one with high risk. In checking out the quality of the company's past work the technical proposal evaluation team contacted five of the company's references as mentioned in its technical proposal. In all five cases, the points of contact were unable to provide any information on PHE/Maser as a company they were familiar with. In addition, the company's original proposal contained misrepresentations regarding the identity of the entity submitting the proposal and following that the BAFO was submitted by a different entity. Also, the BAFO reflected what appeared to be a scheme for PHE/Maser to circumvent the Limitations On Subcontracting clause (FAR 52.219-14). Under these circumstances, the PHE/Maser BAFO was determined to be one of such high risk that logically it could not be selected over RAI's BAFO even though it was lower in price (third lowest price overall)."

At the protest hearing, the SSA stated that in assessing high risk to PHE/Maser's proposal, he also relied on the pre-award survey report of the Defense Contract Administration Services Region (DCASR), Philadelphia, dated October 18, 1990, which

recommended "no award" to PHE/Maser on the basis of financial incapability. Tr. at 12-15.

In summary, the SSA's assessment of high risk associated with PHE/Maser's proposal was based on; (1) PHE/Maser's financial capability as reflected in the DCASR pre-award survey report; (2) doubt as to PHE/Maser's intent or capability to comply with the RFP's "Limitations on Subcontracting" clause; (3) questions concerning PHE/Maser's corporate status and legal capacity to contract; and (4) PHE/Maser's past contract performance as described by the references contacted. We sustain the protest because we find that the risk assessment in this case in part resulted in a circumvention of the requirements of the Small Business Act and in part is unsupported by the record.

ANALYSIS

The Small Business Act, 15 U.S.C. § 637(b)(7) (1988), provides that it is the exclusive responsibility of the Small Business Administration to:

"certify to [g]overnment procurement officers . . . with respect to all elements of responsibility, including, but not limited to, capability, competency, capacity, credit, integrity, perseverance, and tenacity, of any small business concern . . . to receive and perform a specific [g]overnment contract. A [g]overnment procurement officer . . . may not, for any reason specified in the preceding sentence preclude any small business concern . . . from being awarded such contract without referring the matter for a final disposition to the [SBA]." (Emphasis added.)

The Act requires that, when a procuring agency believes a small business concern will be unable to satisfactorily perform a given contract due to questions regarding the qualities or characteristics listed above, the procuring agency must refer the matter to the SBA for a final determination in that regard. See Sanford and Sons Co., 67 Comp. Gen. 612 (1988), 88-2 CPD ¶ 266; see also FAR § 19.602-1(a).

On the other hand, under the procurement statutes and regulations, contracting agencies are responsible for awarding contracts on the basis of proposals that are "most advantageous to the United States," 10 U.S.C. § 2305(b)(4)(B) (1988), and to sources "whose performance is expected to best meet stated Government requirements." FAR § 15.603(d). Procuring agencies are responsible for including in solicitations the evaluation factors that will be used for

determining which proposals are most advantageous to the government, 10 U.S.C.A. § 2305 (West Supp. 1991), and these evaluation factors often include offeror experience, management, and certain other matters that traditionally have been regarded as bearing on responsibility.^{7/} See 41 U.S.C. § 403(7) (1988); FAR § 9.104-1; SBD Computer Serv. Corp., B-186950, Dec. 21, 1976, 76-2 CPD ¶ 511; Design Concepts, Inc., B-184754, Dec. 24, 1975, 75-2 CPD ¶ 410.

We have recognized that, in furtherance of their responsibility to identify for each procurement the proposal or proposals that are most advantageous to the government, procuring agencies may utilize responsibility-type factors for the technical evaluation of proposals. See SBD Computer Serv. Corp., *supra*, and cases cited therein. However, such traditional responsibility factors may be used as evaluation factors only if the agency's needs warrant a comparative evaluation of those areas. Sanford and Sons Co., *supra*. Further, such factors may not be used in a comparative evaluation unless offerors are expressly or implicitly advised that proposals will be so comparatively evaluated. Flight Int'l Group, Inc., 69 Comp. Gen. 741 (1990), 90-2 CPD ¶ 257. An agency also may not, in effect, find a small business nonresponsible through the use of proposal evaluation factors and thereby avoid the requirements of the Small Business Act set forth above. See Sanford and Sons Co., *supra*; 52 Comp. Gen. 47 (1972); Clegg Industries, Inc., B-242204.3, Aug. 14, 1991, 91-2 CPD ¶ ____.

Bases For Risk Assessment Requiring Referral To The SBA

Here, the Air Force's risk assessment took into account two matters--financial capability and ability to comply with a specific performance clause--that are traditional responsibility matters. See FAR § 9.104-1; Little Susitna, Inc., B-244228, July 1, 1991, 91-2 CPD ¶ 6. The record does not indicate that a comparative assessment of these responsibility factors was performed; rather, the selection official simply decided that the protester's "exceptional," lower-cost proposal was too risky to accept in light of these (and two other) factors.

^{7/} 10 U.S.C.A. § 2305(a)(3) (West Supp. 1991) provides that "in prescribing evaluation factors . . . an agency shall clearly establish the relative importance assigned to the evaluation factors and subfactors, including the quality of the product or services to be provided (including technical capability, management capability, and prior experience of the offeror)."

With respect to financial capability, the Air Force's assessment of high risk regarding PHE/Maser's proposal was based on the DCASR pre-award survey report dated October 18, 1990. This report stated:

"Although [PHE/Maser, Inc.'s] technical and production capabilities were found to be satisfactory, their financial capabilities were found unsatisfactory.

Financial: [Phe/Maser, Inc.] does not have sufficient funds and/or other financing available to support the current backlog of business and the working capital requirements of this solicitation.

Based upon the unsatisfactory findings of the offeror's financial capabilities, a no award is recommended."

An offeror's financial capability to perform a contract is a traditional responsibility factor, see FAR § 9.104-1, and a pre-award survey is conducted when the contracting officer needs information to determine the responsibility of an offeror. See FAR § 9.106-1. Obviously, the information concerning PHE/Maser's financial situation was sought and intended to be used for determining PHE/Maser's responsibility. The SSA, however, concedes that he relied on this information in deciding that the risk of contracting with the protester was too great. In effect, the SSA used this information to decide that the protester could not or would not perform because of its financial situation.

Where the RFP does not advise offerors that traditional responsibility factors such as financial capability will be comparatively evaluated, a procuring agency may not reject a small business concern's proposal on the basis of its negative assessment of that factor without referring the matter to the SBA. See Flight Int'l Group, Inc., supra; Eagle Technology, Inc., B-236255, Nov. 16, 1989, 89-2 CPD ¶ 468.

Here, the RFP did not indicate that offerors' financial capabilities would be comparatively evaluated, and the record contains no indication that such a comparative evaluation was performed. Rather, the record indicates that the Air Force simply accepted the DCASR determination regarding financial capability as a basis for the high risk assessment. In effect, we think the Air Force made a nonresponsibility determination without referring the matter to the SBA.

With regard to the "Limitations on Subcontracting" clause, PHE/Maser's proposal provided that it would meet this

requirement. However, the Air Force's risk assessment reflected concern that PHE/Maser would not comply.

A determination regarding an offeror's intent or ability to comply with a material provision of a solicitation relates to that offeror's "capability, competency, capacity, credit, integrity, perseverance, and tenacity" to perform the contract. See 15 U.S.C. § 637(b)(7). We have specifically held that the determination of whether an offeror can comply with the "Limitations on Subcontracting" clause "is a matter of responsibility to be [finally] determined by the SBA in connection with its Certificate of Competency (COC) proceedings." Stemaco Prods., Inc., B-243206, Mar. 27, 1991, 91-1 CPD ¶ 333; see also Little Susitna, Inc., B-244228, supra.

Here, the Air Force did not conclude that PHE/Maser failed to offer to comply with the "Limitations on Subcontracting" clause. Rather, the Air Force simply decided that PHE/Maser would not comply with the RFP requirements in that regard. Thus, the Air Force determined that PHE/Maser was nonresponsible on this basis. See Standard Manufacturing Company, Inc., B-236814, Jan. 4, 1990, 90-1 CPD ¶ 14 (whether contractor will meet its obligations to perform is a matter of responsibility).

In short, the Air Force improperly based its assessment of "high risk" regarding PHE/Maser's proposal on PHE/Maser's financial capability and the Air Force's concern that PHE/Maser would not comply with the "Limitations on Subcontracting" clause without referring the matter to the SBA. Both of these bases for rejecting the proposal are matters of responsibility which, under the Small Business Act, must be referred to the SBA prior to a procuring agency's rejection of a small business proposal. Our decision in this regard is not affected by the fact that the Air Force did not label as "responsibility" its determinations regarding PHE/Maser's financial capability and compliance with the "Limitations on Subcontracting" clause. See Clegg Industries, Inc., supra. An agency may not avoid the requirements of the Small Business Act by labeling as "risk assessments" what are, in effect, responsibility determinations.

Bases For Risk Assessment Not Supported By The Record

In assigning high risk to PHE/Maser's proposal, the Air Force stated in the "integrated assessment" document that "the company's original proposal contained misrepresentations regarding the identity of the entity submitting the proposal and following that the BAFO was submitted by a different entity." The Air Force's position regarding possible

misrepresentations and PHE/Maser's questionable capacity to contract is not supported by the record.

As PHE/Maser pointed out to the Air Force in its letter dated May 22, 1990, there is ample legal authority permitting an entity, formed for the purpose of performing a particular government contract, to submit a proposal in the name of the corporation prior to formally incorporating. See Telex Communications, Inc.; Mil-Tech Sys., Inc., B-212385; B-212385.2, supra; see also Protectors, Inc. B-194446, Aug. 17, 1979, 79-2 CPD ¶ 128; Oscar Holmes & Son, Inc.; Blue Ribbon Refuse Removal Inc., B-184099, Oct. 24, 1975, 75-2 CPD ¶ 251. At a minimum, these cases provided PHE/Maser with a good faith basis for submitting its initial proposal under the corporate name. Accordingly, we find no reasonable basis for the Air Force to conclude that PHE/Maser engaged in misrepresentation by submitting its proposal in the name of the corporation that was formally incorporated after proposal submission.

Further, the record indicates that the Air Force was fully aware of PHE/Maser's legal status more than 10 months before the SSA's source selection decision. On May 7, 1990, the contracting officer and the contract specialist met with a PHE/Maser representative. According to a "Memorandum for the Record," signed by both the contracting officer and contracting specialist, this meeting was held to explain the Air Force's reasons for re-opening negotiations after the initial decision had been made to award the contract to PHE/Maser. The memorandum further stated:

"[The contracting officer] explained [to the PHE/Maser representative] that he believed the SBA would be making the final decision as to PHE/Maser's eligibility for contract award. He said under the circumstances he now can see himself clear to request BAFOs to give everyone an opportunity to revise proposals and at the same time dispose of the protests lodged with GAO. He encouraged [the PHE/Maser representative] that he was not out of the picture at this point, and unless we receive an unfavorable report from SBA or our legal officer their BAFO will be treated on the same basis as BAFOs from other participants within the competitive range.

[The PHE/Maser representative] asked if before the BAFO he should fix the name problem. [The contracting officer] said if the SBA gave a favorable report there perhaps would be no need, and if they desired to change their name this could be

done after award under FAR procedures if they got the award." (Emphasis added.)

Less than 1 month after this meeting, the contracting officer asked PHE/Maser to submit a BAFO and twice thereafter asked PHE/Maser to extend its offer. In light of the contracting officer's discussions with PHE/Maser regarding the nature of its corporate status, the Air Force's subsequent request that PHE/Maser submit a BAFO, and the Air Force's requests that PHE/Maser extend the validity of its BAFO, we find no reasonable basis for the Air Force to finally reject PHE/Maser's significantly lower-cost, "blue" proposal on the theory that PHE/Maser misrepresented its corporate status in its initial proposal or on the basis that PHE/Maser's initial proposal led the Air Force to question--but not resolve--PHE/Maser's legal capacity to enter into a contract.

Finally, we note that PHE/Maser's initial proposal, its BAFO, and all subsequent extensions of its BAFO were submitted in the name of PHE/Maser, Inc. Under the circumstances presented, we fail to see any basis for questioning PHE/Maser's legal capacity to form a contract. See Telex Communications, Inc.; Mil-Tech Sys., Inc., B-212385; B-212385.2, supra; see also Proectors, Inc. B-194446, supra; Oscar Holmes & Son, Inc.; Blue Ribbon Refuse Removal Inc., B-184059, supra.

With respect to references, the RFP did not expressly require offerors to provide a list. In March 1990, the Air Force contacted PHE/Maser and requested that it identify prior government clients whom the Air Force could contact to obtain references regarding past or ongoing work. PHE/Maser responded by providing the names and addresses of three individuals and stated that the references "will recognize us as Potomac Hudson Engineering, or PHE." Notwithstanding this information provided by PHE/Maser, the Air Force subsequently contacted as references individuals other than those identified by PHE/Maser.

The "integrated assessment" document stated that:

"the technical proposal evaluation team contacted five of the company's references as mentioned in its technical proposal. In all five cases, the points of contact were unable to provide any information on PHE/Maser as a company they were familiar with."

This document does not explain why the Air Force chose to contact references other than those which PHE/Maser identified. To the extent the above statement suggests that all of the references contacted were unfamiliar with the

people associated with the newly formed PHE/Maser, Inc., it is misleading. In fact, two of the individuals contacted had favorable comments regarding Potomac Hudson Engineering.^{8/} Specifically, the proposal analysis report, submitted to the SSA by the SSET chairman, discussed the references contacted in connection with PHE/Maser's proposal, stating:

"[A reference in the procurement office at Warner Robbins Air Force Base] was not familiar with PHE/Maser but was familiar with Potomac Hudson Engineering and was very satisfied with their work. They . . . always submitted their deliverables ahead of schedule." (Emphasis added.)

Regarding another reference contacted in connection with PHE/Maser's proposal, the proposal analysis report stated:

"[A reference with the U.S. Coast Guard] was not familiar with PHE/Maser but he did know Potomac Hudson Engineering. He . . . was satisfied with their work." (Emphasis added.)

The statement in the "integrated assessment" of proposals that the references "were unable to provide any information on PHE/Maser" also fails to disclose that, in checking two references for RAI (the awardee), the Air Force obtained unsolicited, favorable comments relating to Potomac Hudson Engineering. Specifically, in discussing the first of five references supporting RAI's proposal, the proposal analysis report stated:

"[A reference from the Department of Transportation] said 'RAI is doing a good job for them.' . . . (He mentioned RAI is using Potomac Hudson Engineering as one of the subcontractors.)"

In discussing the second of five references supporting RAI's proposal, the proposal analysis report stated:

"[A different reference from the Department of Transportation] said, 'RAI was easy to work with and the main strength of RAI was with their

^{8/} PHE/Maser had specifically advised the Air Force that its references "will recognize us as Potomac Hudson Engineering or PHE." Further, in light of the Air Force's earlier arguments that it believed the initial proposal was submitted on behalf of two separate companies--one of which was Potomac Hudson Engineering, the Air Force cannot credibly assert that references for Potomac Hudson Engineering were not relevant to PHE/Maser's proposal.

subcontractors.' (RAI is using Potomac Hudson Engineering as one of the subs for the DOT contract)."

Accordingly, the Air Force's statement that "all five of the references contacted could not provide information on PHE/Maser" fails to accurately reflect the information the Air Force actually obtained regarding PHE/Maser's past contract performance, and does not by itself provide a reasonable basis for assigning a high risk to PHE/Maser's proposal.

Conclusion

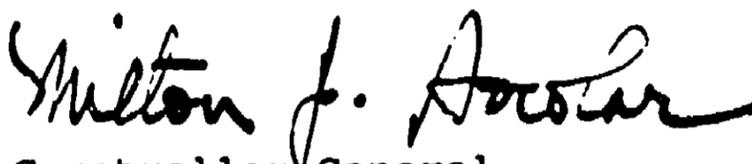
On the basis of the record presented, we conclude that the Air Force's assessment of high risk with regard to PHE/Maser's proposal in part resulted in the circumvention of the requirements of the Small Business Act and in part is unsupported by the record. Specifically, to the extent the assessment of risk was based on PHE/Maser's financial capability and the Air Force's concern that PHE/Maser would not comply with the "Limitations on Subcontracting" clause, these matters should have been referred to the SBA before the proposal was rejected. To the extent the risk assessment was based on PHE/Maser's purported misrepresentations regarding its corporate status and lack of references, the record does not reasonably support the Air Force's assessment of high risk.

The protest is sustained.

RECOMMENDATION

The Air Force awarded this contract to RAI on April 11, 1991. PHE/Maser's protest was filed more than 10 calendar days after that award; accordingly, the Air Force was not required to suspend contract performance pending resolution of this protest. However, the contract is being performed on a task order basis. We therefore recommend that the Air Force reconsider the risk presented by PHE/Maser's proposal without taking into account concerns related to PHE/Maser's corporate status or its references, neither of which is supported by the record. If the resulting risk assessment warrants selection of PHE/Maser, RAI's contract should be terminated and award made to PHE/Maser. In the event the Air Force still considers that the risk presented by PHE/Maser's financial capability and its ability to comply with the "Limitations on Subcontracting" clause is sufficient to preclude award, the matter should be referred to the SBA and, in the event the SBA issues a COC, RAI's contract should be terminated and the award should be made to PHE/Maser. In addition, PHE/Maser is

entitled to the costs of pursuing its protest. 56 Fed. Reg.
3,759 (1991) (to be codified at 4 C.F.R. § 21.6(d)).

for 
Comptroller General
of the United States